## Wednesday, September 1, 2010

#### **Division Five**

## A125900 – The People, v. Kevin Lane.

The order is affirmed. Needham, J., We concur: Jones, P.J., Simons, J. (Not for Publication.)

## Thursday, September 2, 2010

#### **Division One**

## A128640 – C.B., v. The Superior Court of Humboldt County, R.P.I. Humboldt County Department of Health and Human Services.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4<sup>th</sup> 888,894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Cal. Rules of Court, rules 8.454(a), 8.490(b)(3).) Margulies, Acting P.J., We concur: Dondero, J., Banke, J. (Not for Publication.)

#### **Division Three**

A125352 – Richard Vanderkous, as Trustee, etc., v. Nanette Ujdur Conley.

The judgment is affirmed. Siggins, j., We concur: Pollak, Acting P.J., Jenkins, J. (Certified for Publication.)

#### **Division Four**

## A126866 – The People, v. Clarence Varnedoe, Jr.

The judgment is affirmed. Reardon, J., We concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

### Thursday, September 2, 2010 (Continued)

A128674 – M.R., v. The Superior Court of Marin County, R.P.I. Marin County Department of Health and Human Services, et al.

A128679 – R.B., v. The Superior Court of Marin County, R.P.I. Marin County Department of Health and Human Services, et al.

The petitions for an extraordinary writ are denied on the merits. (§ 366.26, subd. (*l*).) Our decision is final in this court immediately in the interests of justice. Rivera, J., We concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

### **Division Five**

### A123293 - Dennis E. Baca, v. Robert Wayne Matheson, Jr., et al.

The injunction issued by the court on September 16, 2008 is modified to make clear that Baca has the right to stop trespassing conduct by Matheson or his agents on Baca's Lot 11 outside the Reciprocal Easement. In all other respects, the judgment is affirmed.

Costs to respondents. Jones, P.J., We concur: Needham, J., Bruiniers, J. (Not for Publication.)

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, September 1, 2010

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Dondero, Justice, Banke, Justice, Fred Abad, Deputy Clerk, and CHP Officer Ricky Franklin, Bailiff.

#### A127041 In re E.M.

People,

v.

E.M..

Cause called and argued by Randall Conner, counsel for appellant, and Martin Kaye, counsel for respondent. Cause ordered submitted.

Justice Marchiano congratulated Deputy Attorney General Martin Kaye's 37 years of service. This is Martin Kaye's last court appearance prior to his retirement.

#### A125613 Anastasia Shamina,

V.

Yevgeniy Urdenko.

Cause called and argued by Anastasia Shamina, appellant in propria persona, Robert Evans, counsel for respondent. Cause ordered submitted.

Justice Margulies joined the bench and Justice Dondero left the bench.

### A126691 Thomas F. Lum,

v.

William Orellana, et al.

Cause called and argued by Robin Trembath, counsel for appellants, and Jeremy Lateiner, counsel for respondent. Cause ordered submitted.

### A122106 In re Marriage of Algie and Joy Shanklin.

### A122331 Algie Shanklin,

v.

Joy Shanklin.

Cause called and argued by Joy Shanklin, appellant in propia persona. Respondent did not appeal for oral argument. Cause ordered submitted.

#### Continued

Justice Marchiano left the bench, Justice Dondero joined the bench, and Justice Margulies presided over the next case on calendar.

## A127136 Bigge Crane & Rigging Co.,

V.

Workers' Compensation Appeals Board, et al. Cause called and argued by Robert Peterson, counsel for petitioner, and James Butler, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

## Wednesday, September 1, 2010

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Dondero, Justice, Fred Abad, Deputy Clerk, and CHP Officer Tom Lipsey, Bailiff.

A123835 Lexington Insurance Company,

v.

Sage Electric Company, et al.

Cause called and argued by James Wagoner, counsel for appellant, Edwin Brown, counsel for respondent Pyramid Builders, and Wynn Kaneshiro, counsel for respondent Sage Electric Co. Cause ordered submitted.

A126826 Robert Siemons,

V.

Chase Bank USA.

Cause called and argued by Susan Handelman, counsel for appellant, and Stephen Cain, counsel for respondent. Cause ordered submitted.

Court Adjourned

### Friday, September 3, 2010

### **Division One**

### A123595 - The People, v. Lloyd Ronald Glover.

The judgment is affirmed. The superior court clerk is ordered to prepare an amended abstract of judgment reflecting the sentence imposed by the trial court, and to forward a copy to the Department of Corrections. Banke, J., We concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

### **Division Three**

## A122511 – California Oak Foundation et al., v. The Regents of the University of California et al.

Having found no basis for setting aside the Regents' certification of the EIR or their approval of the Athlete Center project, we affirm the trial court's denial of the writ of mandate and award to the Regents of \$51,442.63 for costs expended in preparing and copying the administrative record. The judgment stands. Jenkins, J., We concur: McGuiness, J., Siggins, J. (Certified for Publication.)

### **Division Four**

A124997 – Jacqueline Hutton, as Guardian ad Litem, etc., v. Frank Ennix et al. The judgment is affirmed. Reardon, Acting P.J., We concur: Sepulveda, J., Rivera, J. (Not for Publication.)

### Tuesday, September 7, 2010

#### **Division Two**

## A126075 – The People, v. Tommy Joe Thompson.

The judgment of conviction is affirmed. Richman, J., We concur: Kilne, P.J., Lambden, J. (Not for Publication.)

### Tuesday, September 7, 2010 (Continued)

#### **Division Four**

## A126578 - The People, v. Carmel Alfred Spiteri.

The order is affirmed. Reardon, J., We concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

## A123437 – The People, v. Leon Wiley.

The judgment is affirmed. Reardon, Acting P.J., We concur: Sepulveda, J., Rivera, J. (Not for Publication.)

### **Division Five**

## A126517 – In re Erika H.A., a Person Coming Under the Juvenile Court Law. The People, v. Erik H.A.

The judgment is affirmed. Bruiniers, J., We concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

### Wednesday, September 8, 2010

#### **Division One**

## A127162 – In re J.A., a Person Coming Under the Juvenile Court Law. The People, v. J.A.

The order committing defendant to the DJJ is affirmed. Dondero, J., We concur: Marchiano, P.J., Banke, J. (Not for Publication.)

## A127565 – The People, v. Keenan Wilkins.

The trial court's order denying defendant's request for relief is affirmed. Dondero, J., We concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

### Wednesday, September 8, 2010 (Continued)

## A122448 – Bay Guardian Company, v. New Times Media LLC et al.

BY THE COURT: It is ordered that the opinion filed herein on August 11, 2010, and modified on August 11, 2010, be further modified in the following particulars: (See Order.) There is no change in judgment.

The petition for rehearing is denied. Marchiano, P.J. (Certified for Partial Publication.)

#### **Division Five**

## A128976 – Stacy B., v. The Superior Court of the City and County of San Francisco, R.P.I. Ethan B., a minor, et al.

The writ petition is denied on the merits. The request for a stay is also denied. Because the .26 hearing is set for October 13, 2010, this opinion is final as to this court immediately. (Rule 8.490(b)(3).) Jones, P.J., We concur: Needham, J., Bruiniers, J. (Not for Publication.)

## Thursday, September 9, 2010

### **Division One**

## A126288 - Kenneth D. Demartini, v. Judith L. Butler, as Trustee, etc.

BY THE COURT: It is ordered that the opinion filed herein on August 13, 2010, be modified as follows: (See Order.)

There is no change in the judgment.

al.

The petition for rehearing is denied. Marchiano, P.J.

### A126041 – The People, v. Lamos Sturgis.

After a full review of the record, we find no arguable issues and, therefore, affirm the judgment. Dondero, J., We concur: Marchiano, P.J., Banke, J. (Not for Publication.)

#### **Division Four**

## A121569 & A123187 – James Howard et al., v. American National Fire Ins. Co. et

BY THE COURT: Defendants' petition for rehearing is denied.

The opinion heretofore filed is modified as follows: (See Order.)

The above modification does not effect any change in the judgment. Ruvolo, P.J.

### Thursday, September 9, 2010 (Continued)

## A127430 – In re A.N., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. D.N.

The order terminating parental rights is affirmed. Ruvolo, P.J., We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

## A127159 - The People, v. Laveitigaotumua Laufasa.

The judgment is affirmed. Sepulveda, J., We concur: Ruvolo, P.J., Reardon, J. (Certified for Publication.)

#### **Division Five**

## A126479 – In re Kevon H., a Person Coming Under the Juvenile Court Law. The People, v. Kevon H.

The finding that Kevon H. violated section 12031(a)(1) is reversed. Bruiniers, J., We concur: Jones, P.J., Simons, J. (Not for Publication.)

## Monday, September 13, 2010

#### **Division Five**

## A125111/A125487 – In re Joshua D., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. April R.

The June 18, 2009 order suspending visitation is affirmed. Simons, J., We concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

### Tuesday, September 14, 2010

#### **Division Two**

## A120428 – The People, v. John Davis.

The judgment is reversed and this case is remanded for further proceedings consistent with this decision. Haerle, J., We concur: Kline, P.J., Richman, J. (Not for Publication.)

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION FOUR

Tuesday, September 14, 2010

The Court convened at 9:32 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P. J.; Sepulveda, J.; Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Ricky Franklin, Bailiff.

A122357 and Rebecca Spielman, et al

A123563

Ex'pression Center for New Media

Lawrence Yu et al.

Ex'pression Center for New Media

Cause called. Daniel Grout argued for appellant Spielman et al; Joseph Lange argued for appellant Yu, et al. Eric Sinrod argued for respondent Ex'pression Center. Cause submitted.

At this point, Sepulveda, J., left the bench and Reardon, J., joined the bench. Argument continued before Ruvolo, P.J.; Reardon, J., and Rivera, J.

#### A124613 Beatriz Lares

v.

La Clinica de la Raza, et al

Cause called. Andrew Scher argued for appellant Lares; Henry Wykowski was also present on behalf of appellant, but did not address the court. Christine Maloney argued for respondent La Clinica de la Raza. Cause submitted.

#### A126741 Gerald Goodrick

Hertz Equipment Rental Association, et al

Cause called. Michael Christian argued for appellant Hertz. Jonathan Siegel argued for respondent Goodrick. Daria Dimitroff was also present on behalf of respondent, but did not address the court. Cause submitted.

Court recessed at 10:59 a.m.

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION FOUR

Tuesday, September 14, 2010

The Court reconvened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P. J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Jeff Davidson, Bailiff.

### A122908 People

V.

Zachary Van Haynes

Cause called. Mark Greenberg argued for appellant Van Haynes. Allan Yannow argued for respondent. Cause submitted.

## A127090 Robert L. Sanders Professional Law Corporation

v

Renee C. Cooper

Cause called. Appellant Robert L. Sanders argued. Ory Sandel argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P. J., Sepulveda, J., and Rivera, J.

### A124344 Roland Rapp

v

James Geagan et al.

Cause called. David Baskind, who did not request oral argument and is counsel for respondent the People, appeared. Cause submitted without any argument.

Court adjourned at 2:02 p.m.

### Wednesday, September 15, 2010

#### **Division One**

## A124508 - The People, v. Javante Turner.

The judgment is affirmed. Banke, J., We concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

## A125736 – Estate of Margaret Cairns, Deceased. Kenneth S. Cairns, v. Kenneth G. Cairns, Trustee, et al.

Accordingly, the judgment is affirmed.

Costs on appeal awarded to respondents. Dondero, J., We concur: Marciano, P.J., Banke, J. (Not for Publication.)

## A126691 – Thomas F. Lum, v. William A. Orellana et al.

The trial court's August 27, 2009 order denying defendants' motion to tax costs is affirmed. Plaintiff shall recover his own costs on appeal. Margulies, J., We concur: Marchiano, P.J., Banke, J. (Not for Publication.)

#### Division Three

## A125297 – Michael Lynn Gabriel et al., v. Wells Fargo Bank, N.A.

A127675 - Kuniko Yamamoto, v. Wells Fargo Bank, N.A.

BY THE COURT: The opinion in the above-entitled matter filed on August 30, 2010, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered. Pollak, J. (Certified for Publication.)

## A128058 – In re J.S., a Person Coming Under the Juvenile Court Law. The People, v. J.S.

The maximum term of confinement set in the juvenile court's disposition is stricken. As modified, the judgment is affirmed. Siggins, J., We concur: Pollak Acting P.J., Jenkins, J. (Not for Publication.)

### Wednesday, September 15, 2010 (Continued)

#### **Division Four**

### A124579 – A.M., v. A.H.

The judgment is affirmed. Ruvolo, P.J., We concur: Sepulveda, J., Rivera, J. (Not for Publication.)

### **Division Five**

### A128538 – The People, v. Darren Valenzano.

The judgment is affirmed. Jones, P.J., We concur: Needham, J., Bruiniers, J. (Not for Publication.)

## A124384, A124844 - Paul Cobb et al., v. Velda M. Berkley.

The judgment is reversed and the matter is remanded with directions to enter a new judgment reducing the damages awarded to GNI, APC, and Cobbb by \$61,414.03 to reflect the reduction in economic damages. The court shall also enter judgment in the amount of \$66,000 in favor of appellant on her cross-claims against GNI, APC, and Cobb, and on her claim against Bauer and the Guaranty. The judgment is otherwise affirmed. The parties shall bear their own costs on appeal. Simons, j., We concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION THREE

Wednesday, September 15, 2010

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J. and Jenkins, J.; and L. Phonseya, Deputy Clerk.

A123815 In re M. P., a Person Coming Under the Juvenile Court Law.

The People,

v.

M.P.

Cause called and argued by Lisa Romo, counsel for appellant, and Michael Banister, counsel for respondent. Cause ordered submitted.

A122187 East Bay Regional Park District,

V.

C.Donald Carr et al.

Cause called and argued by Edward Gary Burg, counsel for appellant, and Todd A. Amspoker, counsel for respondent. Cause ordered submitted.

A124422 Joyce Thomas-Villaronga,

v.

California Department of Corrections et al.

Cause called and argued by Jose Luis Fuentes, counsel for appellant, and Robert Harkness, counsel for respondent. Cause ordered submitted.

A117526 Jennifer M. Moore,

A118678 v.

Thomas Hill et al.,

Jennifer M. Moore,

v.

Richard Hatfield.

Cause called and argued by James H. Seymour, counsel for appellant, John Heffner and David Balter, counsel for respondent Jacqueline Fenton. Lloyd Strobel appeared for respondent John Culver but did not argue. Gregory Jung appeared for respondent Thomas Hill but did not argue. Cause ordered submitted.

## **CONTINUED**

At this point in the proceedings, Justice Pollak left the bench and Justice Siggins joined the bench.

A123254 Insurance Commissioner of The State of California,

v.

Golden Eagle Insurance Company,

Luben Walcheff et al.

Cause called and argued by Bruce Cornblum, counsel for appellants, and Richard P. Edwards, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench and Justice Pollak re-joined argument. Justice Pollak presided over the remainder of the morning session.

### A128302 L.Z.,

V.

The Superior Court of Contra Costa County,

Contra Costa County Children & Family Services Bureau et al.

Cause called and argued by Carin L. Johnson, counsel for petitioner, and Kathleen LaPlante, counsel for real parties in interest. Cause ordered submitted.

COURT RECESSED UNTIL 1:30 P.M.

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION THREE

### Wednesday, September 15, 2010

Court re-convened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J. and Siggins, J.; and B. Robbins, Deputy Clerk.

### A126732 In re Rex Lee Bell

On Habeas Corpus.

Cause called and argued by Ozro William Childs, counsel for petitioner, and Rene A. Chacon, counsel for respondent. Cause ordered submitted.

### A126182 Lien Ly et al.,

v

County of Alameda et al.

Cause called and argued by Stephen J. Kennedy, counsel for appellant, and Claude F. Kolm, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Pollak left the bench and Justice Jenkins joined the bench.

## A125476 Chris Wymore et al.,

v.

Edgar Minto.

Cause called and argued by Stephen F. Henry, counsel for appellants, and Richard M. Kelly, counsel for respondent. Cause ordered submitted.

## A126167 The People,

v.

T.F..

Cause called and argued by Violet Elizabeth Grayson, counsel for appellant, via teleconference, and Jeffrey Bryant, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Siggins left the bench and Justice Pollak rejoined the bench.

### A127632 Arsenio Junio et al.

v.

First Federal Bank of California.

Cause called and argued by Michael Patrick Rooney, counsel for appellants, and Nami Rose Kang, counsel for respondent, via teleconference. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench and Justice Siggins re-joined the bench. Justice Pollak presided over the remainder of the session.

## A124919 The People,

v.

Richard James Smiarowski.

Cause called and argued by Alan C. Stern, counsel for appellant, via teleconference, and Rene A. Chacon, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

### Thursday, September 16, 2010

#### **Division One**

## A124730 - Karen Lee et al., v. Fidelity National Title Insurance Company.

The judgment for defendant is reversed. Plaintiffs to recover costs. Marchiano, P.J., We concur: Margulies, J., Banke, J. (Certified for Publication.)

#### **Division Four**

### A122244 – The People, v. Nathan Bryan Kinkade.

The aggravated kidnapping conviction is reversed and reduced to one for simple kidnapping. The matter is remanded to the trial court for resentencing on all counts. Reardon, J., We concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

## A124098 – California Hospital Association, v. David Maxwell-Jolly, as Director, etc. et al.

BY THE COURT: It is ordered that the opinion filed herein on August 20, 2010, be modified as follows: (See Order.)

There is no change in the judgment. Respondents' petition for rehearing is denied. The requests for publication are granted. Ruvolo, P.J. (Certified for Publication.)

### A125046 - Desley Brooks, v. San Francisco Chronicle et al.

The judgment is affirmed. Ruvolo, P.J., We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

## Division Five

### A121879 – The People, v. Andres P. Castillo.

The sentence is vacated and the case is remanded for resentencing at which time the court should exercise its sentencing discretion consistent with the views expressed herein. In all other respects, the judgment is affirmed. Simons, J., We concur: Jones, P.J., Needham, J. (Not for Publication.)

## Friday, September 17, 2010

#### **Division Three**

## A128302 – L.Z., v. The Superior Court of Contra Costa County, R.P.I. Contra Costa County Children & Family Services Bureau et al.

The order denying Mother reunification services and setting this case for a hearing pursuant to section 366.26 is reversed. Mother is to be provided reunification services. Siggins, J., We concur: Pollak Acting P.J., Jenkins, J. (Not for Publication.)

## A124226 – The People, v. Nathaniel Perry Givens.

The matter is remanded to the trial court for the limited purpose of imposing a sentence with respect to counts 8 through 12 prior to staying it. The judgment is affirmed in all other regards. Jenkins, J., We concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

## A126020 – Jonathon Wells, v. The Superior Court of the City and County of San Francisco County, R.P.I., The People.

The order to show cause is discharged. The petition for a writ of mandate and/or prohibition is denied. The stay previously issued by the Supreme Court shall automatically dissolve upon issuance of the remittitur. McGuiness, P.J., We concur: Siggins, J., Jenkins, J. (Not for Publication.)

### **Division Four**

## A125679 – California Correctional Peace Officers' Association et al., v. State of California et al.

BY THE COURT: Respondents' request that this court's August 18, 2010 opinion be certified for publication is granted. The Reporter of Decisions is directed to publish said opinion in the Official Reports. Ruvolo, P.J.

## A119856 – The People, v. Edgar Cardelas, Anastasio Flores, Celestino Guillermo, and Gerardo Macias Resendiz.

The judgments are affirmed. Rivera, J., We concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

## Friday, September 17, 2010 (Continued)

#### **Division Five**

### A125491 - Gordon Leung, v. Danilo Mayorga.

The judgment filed in the trial court on April 22, 2009, is modified as follows: On page three, in what is described as "Attachment A to Form Judgment" the first sentence of the first full paragraph is modified to read as follows:

"IT IS ADJUDGED AND DECREED, AND JUDGMENT IS HEREBY ENTERED ACCORDINGLY, that plaintiff Gordon Leung, as well as the property commonly known as 4745 and 4745R International Boulevard, Oakland, the latter being the rear unit of such property, enjoy an nonexclusive prescriptive easement for ingress and egress, for parking behind 4745 and 4745R International Boulevard, Oakland, for loading and unloading, and for all other reasonably necessary commercial uses for the conduct of business associated with 4745 and 4745R International Boulevard, Oakland, over the alleyway running from the 47<sup>th</sup> Avenue entrance of the alleyway to and including the 48<sup>th</sup> Avenue boundary of the properties located at and commonly known as 4745 and 4745R International Boulevard, Oakland."

In all other respects, the judgment is affirmed. Jones, P.J., We concur: Simons, J., Bruiniers, J. (Not for Publication.)

### **Division Five**

### A123984 – The People, v. Marilyn Sibyl Chandler Fenderson.

The judgment is reversed as to the calculation of presentence custody credits only. On remand, the trial court shall revise its sentencing order and the abstract of judgment to reflect that Fenderson earned a total of 24 days of presentence conduct credits pursuant to section 4019, for a total presentence credit of 48 days. The court shall forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects. Bruiniers, J., We concur: Jones, P.J., Needham, J. (Certified for Partial Publication.)

### A126320 – The People, v. Victor M. Napoleon.

The judgment is affirmed. Bruiniers, J., We concur: Jones, P.J., Needham, J. (Not for Publication.)

## Monday, September 20, 2010

#### **Division Four**

## A126414 – in re D.F., a Person Coming Under the Juvenile Court Law. The People, v. D.F.

The DJJ commitment order is affirmed. Reardon, J., We concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

#### **Division Five**

## A125695 – Residential Mortgage Capital, v. Chicago Title Insurance Company.

The judgment is affirmed. Jones, P.J., We concur: Simons, J., Bruiniers, J. (Not for Publication.)

## A129540 – California Department of Corrections and Rehabilitation et al., v. The Superior Court of Marin County, R.P.I. Michael Morales et al.

Let a peremptory writ of mandate issue directing respondent superior court to vacate its August 31, 2010 order granting real party Sims's motion to enforce the injunction and ordering the CDCR to refrain from carrying out any lethal injections unless and until the court dissolves its permanent injunction, and to issue a new and different order denying real party Sims's motion to enforce the injunction and related requests.

This decision shall be final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(3).) The parties shall bear their own costs (Cal. Rules of Court, rule 8.493(a)(1)(B), (2).) Simons, Acting P.J., We concur: Needham, J., Bruiniers, J. (Not for Publication.)

Tuesday, September 21, 2010

### **Division One**

### A124656 – The People, v. Jambri Johnson.

The judgment of conviction is affirmed. By separate order filed this date, we deny the petition for writ of habeas corpus without issuing an order to show cause. Marchiano, P.J., We concur: Margulies, J., Dondero, J. (Not for Publication.)

### Tuesday, September 21, 2010 (Continued)

A128988 – D.S., v. The Superior Court of Alameda County, R.P.I. Alameda County Social Services Agency et al.

A129105 – C.B., v. The Superior Court of Alameda County, R.P.I. Alameda County Social Services Agency et al.

The petitions for extraordinary writ are denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4<sup>th</sup> 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Rules 8.454(a), 8.490(b)(3).) Dondero, J., We concur: Marciano, P.J., Banke, J. (Not for Publication.)

### **Division Three**

## A125681 – The People, v. Aaron Ashley.

The judgment is affirmed. Siggins, J., We concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

### **Division Five**

## A126149 - Cotchett, Pitre, & McCarthy, v. Universal Paragon Corporation et al.

BY THE COURT: It is ordered that the opinion filed herein on August 31, 2010 be modified as follows: (See Order.)

The modification does not effect a change in the judgment.

The petition for rehearing is denied. Jones, P.J., (Certified for Publication.)

## A127209 – In re Madelyn C. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services, v. C.C.

The jurisdictional and dispositional orders are affirmed. Bruiniers, J., We concur: Jones, P.J., Simons, J. (Not for Publication.)

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, September 21, 2010

The Court convened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Davidson and I. Santos, Deputy Clerk.

A126677 In re R.M., a Person Coming Under the Juvenile Court Law.

The People,

v.

R.M.

Cause called and argued by Anne Mania, counsel for appellant, and Christopher W. Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A126234 John Chiatello,

 $\mathbf{v}$ 

City and County of San Francisco.

Cause called and argued by Amy Silverstein, counsel for appellant, and James M. Emery, counsel for respondent. Cause ordered submitted.

Court recessed until Wednesday, September 22, 2010 at 9:30 a.m.

### Wednesday, September 22, 2010

#### Division Two

## A121855, A122157 – Airis SFO, LLC, et al., v. The City and County of San Francisco, et al.

The judgment notwithstanding the verdict is reversed. The motion to dismiss is denied. Costs on appeal are awarded to Airis. Haerle, Acting P.J., We concur: Lambden, J., Richman, J. (Not for Publication.)

## A122345 – The People, v. Royce Miller.

The judgment is affirmed. Kline, P.J., We concur: Lambden, J., Richman, J. (Not for Publication.)

## A126664 - Steven Dale Percelle, v. Swanson, McNamara and Haller et al.

The judgment is affirmed. Percelle is to pay the costs of appeal. Lambden, J., We concur: Kline, P.J., Haerle, J. (Not for Publication.)

### **Division Three**

## A126182 – Lien Ly et al., v. County of Alameda et al., Gia Austin-Carroll, Defendant and Appellant.

The judgment is affirmed. Pollak, J., We concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

## A124422 – Joyce Ann Thomas-Villaronga, v. California Department of Corrections et al.

The judgment is reversed and the matter remanded for further proceedings consistent with this opinion. Pollak, J., We concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

### A126165 – The People, v. Jeremiah Josiah Watley.

The judgment is affirmed. Pollak, Acting P.J., We concur: Siggins, J., Jenkins, J. (Not for Publication.)

## Wednesday, September 22, 2010 (Continued)

## A127904 – In re J.C., a Person Coming Under the Juvenile Court Law. The People, v. J.C.

The judgment is affirmed. Siggins, J., We concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

## A126732 - In re Rex Lee Bell, on Habeas Corpus.

The petition for writ of habeas corpus is granted. The judgment of conviction is vacated and the matter is remanded to the trial court for a new trial pursuant to *In re Alvernaz, supra*, 2 Cal.4<sup>th</sup> at page 944. Siggins, J., We concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

## A124919 - The People, v. Richard James Smiarowski.

The judgment is affirmed. Siggins, J., We concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

## A126167 – In re Thomas F., a Person Coming Under the Juvenile Court Law. The People, v. Thomas F.

The order of the juvenile court terminating probation is modified by striking the words "as unsuccessful." In all other respects, the order is affirmed. The juvenile court is directed to prepare an amended order. Siggins, j., We concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

### A125476 - Chris Wymore, et al, v. Edgar Minto.

The judgment filed April 22, 2009, and the order filed June 19, 2009, are affirmed. Defendant Edgar Minto is awarded costs on appeal. McGuiness, P.J., We concur: Siggins, J., Jenkins, J. (Not for Publication.)

# A123254 – Insurance Commissioner of the State of California, v. Golden Eagle Insurance Company, Luben Walchef, et al., Claimants and Appellants.

The August 27, 2008, order is affirmed. The purported appeal by claimant Villa Bay View LLC is dismissed. Luben Walchef shall pay costs on appeal. McGuiness, P.J., We concur: Siggins, J., Jenkins, J. (Not for Publication.)

### Wednesday, September 22, 2010 (Continued)

#### **Division Four**

### A127090 – Robert L. Sanders Professional Law Corporation, v. Renée C. Cooper.

The judgment is affirmed. Respondent shall recover her own costs on appeal. Sepulveda, J., We concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

#### **Division Five**

## A129129 – Jennifer C., v. The Superior Court of Sonoma County, R.P.I. Sonoma County Human Services Department et al.

The petition for extraordinary writ is denied on the merits. (Cal. Const., art. VI, § 14; Cal. Rules of Court, rule 8.452; *Kowis v. Howard* (1992) 3 Cal.4<sup>th</sup> 888.) Because the .26 hearing is set for October 21, 2010, our decision is immediately final as to this court. (Cal. Rules of Court, rule 8.264(b)), and the request for a stay of that hearing is denied. Simons, J., We concur: Jones, P.J., Needham, J. (Not for Publication.)

# A125808 – Schram Construction, Inc., v. The Regents of The University of California et al., R.P.I. Southland Industries.

BY THE COURT: It is ordered that the opinion filed herein on August 24, 2010, be modified as follows: (See Order.)

The judgment is reversed. The matter is remanded to the trial court with directions to enter a new and different judgment granting the petition, issue a writ of mandate setting aside the subcontract between Southland and DPR, and conduct such further proceedings in this matter as it may deem advisable and within its jurisdiction, in a manner consistent with the views expressed in this opinion. Costs are awarded to SCI.

The order modifying the opinion in this matter changes the appellate judgment. (Cal. Rules of Court, rule 8.264(c)(2).)

The petitions for rehearing are denied. Jones, P.J., (Certified for Publication.)

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, September 22, 2010

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Richman, J., Officer Davidson and A. Reasoner, Deputy Clerk.

The first case called to calendar consisted of Presiding Justice Kline, Justice Haerle and Justice Lambden.

## A126734 Susan Kaye,

v

San Leandro Unified School District.

Cause called and Douglas Freifeld and Christopher Keeler, counsels for appellant, and David Weintraub, counsel for respondent, appeared before the court. Counsels were asked to explain why the court was not informed earlier that settlement discussions were being considered. Parties request to continue oral argument is granted to the October calendar. No further continuances will be granted. Parties will file a Motion to Dismiss the Appeal.

The second case called to calendar consisted of Presiding Justice Kline, Justice Haerle and Justice Richman.

## A126192 In re J.S., a Person Coming Under the Juvenile Court Law.

The People,

v.

J.S.

Cause called and argued by Julia Freis, counsel for appellant, and Christopher W. Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Richman left the bench and Justice Lambden joined the bench for the last case on calendar.

### A122658 The People,

V.

Juan Carlos Jimenez (aka Jiminez).

Cause called and argued by Candace Hale, counsel for appellant, and Arthur Beever, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

### Court recessed until 1:30 p.m.

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, September 22, 2010

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer Franklin and I. Santos, Deputy Clerk.

A128153 In re Kuldip S. Kler on Habeas Corpus.

Cause called and argued by Chris Redburn, counsel for petitioner, and Denise Yates, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A123670/ Donna Wong,

A124882 v.

Greenwich S.F., LLC et al.

Cause called and argued by Leslie Allen Hausrath, counsel for appellant, and John Derrick, counsel for respondent. Cause ordered submitted.

### **COURT ADJOURNED.**

### Thursday, September 23, 2010

#### **Division One**

## A125736 – Estate of Margaret Cairns, Deceased. Kenneth S. Cairns, v. Kenneth G. Cairns, Trustee, et al.

BY THE COURT: The opinion previously filed on September 15, 2010, was not certified for publication. After the court's review of a request pursuant to rule 8.1120(a) of the California Rules of Court, and good cause established under rule 8.1105(c), the opinion is certified for publication. It is hereby ordered that the opinion be published in the Official Reports. Marchiano, P.J. (Certified for Publication.)

#### **Division Two**

### A124637 - The People, v. Salvadore Chavez.

The judgment is affirmed. Kline, P.J., We concur: Lambden, J., Richman, J. (Not for Publication.)

## A128029 - Linh Nguyen, v. Thu Thao Thi Huynh.

The judgment is affirmed. Nguyen is to pay the costs of appeal. Lambden, J., We concur: Kline, P.J., Haerle, J. (Not for Publication.)

## A127300 – The People, v. Mary Victoria Villanueva.

The order declaring defendant incompetent to stand trial and committing her to the state hospital, and authorizing the administration of involuntary antipsychotic medication to defendant is vacated. The trial court is directed to hold a *Marsden* hearing and consider defendant's request to discharge her appointed counsel. At this hearing, the court may appoint new counsel to represent defendant, deny the *Marsden* motion and reinstate its previous order finding defendant incompetent to stand trial and committing her to a state hospital, or proceed otherwise as authorized by law.

The trial court is to conduct a new hearing on the administration of involuntary antipsychotic medication to defendant, if and only if appropriate to the then-current status of the case. The parties shall be permitted to introduce additional evidence at this hearing and the trial court is to make findings that comply with section 1370, subdivision (a)(2)(B) and satisfy the constitutional constraints governing the forcible administration of medication to a criminal defendant. Lambden, J., We concur: Kline, P.J., Haerle, J. (Not for Publication.)

## Thursday, September 23, 2010 (Continued)

### **Division Three**

## A126161 – The People, v. Peter Zigmunt Jackson.

The judgment is affirmed. Pollak, J., We concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

## **Division Four**

### A127015 – The People, v. Jaime Martinez.

The judgment is affirmed. Sepulveda, J., We concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

## A125790 - Maria Coreas, v. City and County of San Francisco.

The judgment is affirmed. Reardon, J., We concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

## A128618 – In re Levi U., a Person Coming Under the Juvenile Court Law. San Francisco Human Services Agency, v. Veronica U.

The order terminating Mother's parental rights is affirmed. Ruvolo, P.J., We concur: Sepulveda, J., Rivera, J. (Not for Publication.)

## Friday, September 24, 2010

### **Division One**

## A127228 – In re D.C., a Person Coming Under the Juvenile Court Law. The People, v. D.C.

The judgment of the trial court is affirmed. Margulies, J., We concur: Marchiano, P.J., Banke, J. (Certified for Publication.)

### Friday, September 24, 2010 (Continued)

## A123835 – Lexington Insurance Company, v. Pyramid Builders, Inc., et al.

The judgments of dismissal in favor of Sage and Pyramid are vacated. The order sustaining Sage's and Pyramid's demurrers to Lexington's cross-complaint is affirmed in part and reversed in part. The order is affirmed as to the ruling sustaining, without leave to amend, the demurrers to Lexington's fifth cause of action for declaratory relief as to contribution. The order is reversed as to the rulings sustaining the demurrers to Lexington's third, fourth, and sixth causes of action for declaratory relief regarding subrogation, indemnity, and subrogation for the breach of contract. The trial court shall enter a new order overruling Sage's and pyramid's demurrers as to those causes of action. The parties shall bear their won costs on appeal. Margulies, J., I concur: Dondero, J. (See Concurring Opinion by Marchiano, P.J.) (Not for Publication.)

#### **Division Two**

## A128332 - The People, v. Jack Franklin Briggs.

Our independent review of the record reveals no arguable issues that require further briefing. The judgment is affirmed. Lambden, J., We concur: Kline, P.J., Richman, J. (Not for Publication.)

## A122658 – The People, v. Juan Carlos Jimenez.

The judgment is affirmed. Lambden, J., We concur: Kline, P.J., Haerle, J. (Not for Publication.)

### **Division Three**

### A122187 - East Bay Regional Park District, v. C. Donald Carr et al.

The judgment is affirmed. Defendants shall bear costs on appeal. Jenkins, J., We concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

### A127632 – Arsenio Junio et al., v. First Federal Bank of California et al.

The judgment is reversed and the matter is remanded to the trial court with directions to grant the Junios leave to amend. The parties shall bear their respective costs on appeal. Pollak, J., We concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

## Friday, September 24, 2010 (Continued)

### **Division Five**

## A124912 – Richard Shelden, v. Marin County Employees Retirement Association et al.

The judgment is affirmed. Jones, P.J., We concur: Simons, J., Needham, J. (Not for Publication.)

## A127117 - The People, v. Roger Marlyn Hudnall.

The judgment is affirmed. Jones, P.J., We concur: Needham, J., Bruiniers, J. (Not for Publication.)

Monday, September 27, 2010

### **Division One**

## A127041 – In re E.M., a Person Coming Under the Juvenile Court Law. The People, v. E.M.

The dispositional order is modified to strike the condition prohibiting defendant from being on or within 150 feet of any campus other than the school in which he is currently enrolled; as so modified, the order is affirmed. Marchiano, P.J., We concur: Dondero, J., Banke, J. (Not for Publication.)

### **Division Two**

## A124650 – United Educators of San Francisco, AFT Local 61, AFL-CIO, NEA/CTA, v. San Francisco Unified School District.

The order sustaining the demurrer without leave to amend is sound. The judgment is affirmed. Kline, P.J., We concur: Haerle, J., Lambden, J. (Not for Publication.)

### Monday, September 27, 2010 (Continued)

#### **Division Four**

## A127866 – In re Aaron M., a Person Coming Under the Juvenile Court Law. The People, v. Aaron M.

The judgment is affirmed. Ruvolo, P.J., We concur: Sepulveda, J., Rivera, J. (Not for Publication.)

## A127283 - Ramesh C. Trivedi, v. Curexo Technology Corporation.

The order denying the motion to compel arbitration is affirmed. Trivedi is to recover his costs and attorney fee incurred on appeal. Ruvolo, P.J., We concur: Reardon, J., Rivera, J. (Not for Publication.)

#### **Division Five**

### A127393 - Sun Min Lee, v. Gu Hyun Kim.

The order is affirmed. Needham, J., We concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

## A123293 – Dennis E. Baca, v. Robert Wayne Matheson, Jr., et al.

BY THE COURT: It is ordered that the opinion filed on September 2, 2010, be modified as follows: (See Order.)

This modification does not change the judgment.

Appellant's petition for rehearing is denied. Jones, P.J., (Not for Publication.)

## A125556 – Farmers Insurance Exchange, v. David Melchner et al., Brian Carter et al., Interveners and Appellants.

The order denying the motion to intervene is reversed. The trial court shall issue a new and different order granting the motion to intervene and requiring respondents to provide DJR with a copy of the settlement agreement forthwith. Needham, J., We concur: Jones, P.J., Simons, J. (Not for Publication.)

## Tuesday, September 28, 2010

#### **Division One**

## A127868 – In re A.B., a Person Coming Under the Juvenile Court Law. The People, v. A.B.

The jurisdictional and dispositional findings and orders are affirmed. Marchiano, P.J., We concur: Dondero, J., Banke, J. (Not for Publication.)

## A127807 – The People, v. James Fredrick Ledesma.

The judgment is reversed and the case is remanded for resentencing. Marchiano, P.J., We concur: Dondero, J., Banke, J. (Not for Publication.)

### A126826 - Robert Michael Siemons, v. Chase Bank USA, N.A.

The trial court's order denying Chase's Motion to Set Aside Default and Quash Service of Summons is reversed to the extent the order refused to set aside the judgment and vacate Chase's default. The matter is remanded with directions to set aside the judgment, vacate Chase's default, and set a reasonable time for Chase to file and serve such motions or responsive pleadings as the trial court deems appropriate. Margulies, J., We concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

#### **Division Five**

### A124741 – The People, v. Steven Paul Crismond.

The judgment is affirmed. Jones, P.J., We concur: Needham, J., Bruiniers, J. (Not for Publication.)

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION FOUR

Tuesday, September 28, 2010

The Court convened at 9:29 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P. J.; Sepulveda, J.; Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Tom Lipsey, Bailiff.

### A126521 Robert J. Nielsen, Jr.,

V.

Michelle N. Olds

Cause called. Bernard Wolf argued for appellant Nielsen. Stephanie Dean argued for respondent Olds. Jerome Blaha also appeared on behalf of respondent but did not address the court. Cause submitted.

### A124311 People of the State of California

V.

Craig Lamont Brown

Cause called. Jonathan Soglin argued for appellant Brown. Deputy Attorney General Allan Yannow argued for respondent People. Cause submitted.

At this point, Rivera, J., left the bench and Reardon, J., joined the bench. Argument continued before Ruvolo, P.J., Reardon, J., and Sepulveda, J.

### A124643 People of the State of California

v.

Andrew D. Johnson

Cause called. Barry Karl argued for appellant Johnson. Deputy Attorney General David Baskind argued for respondent People. Cause submitted.

At this point, Sepulveda, J., left the bench and Rivera, J., rejoined the bench. Argument continued before Ruvolo, P.J., Reardon, J., and Rivera, J.

## A127227 People of the State of California

v.

Mark Jurcso

Cause called. Eloy Trujillo argued for appellant Jurcso. Deputy Attorney General Huy Long argued for respondent People. Cause submitted.

At this point, Ruvolo, P.J., left the bench and Sepulveda, J., returned to the bench. Argument continued before Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

### A124326 People of the State of California

v.

Matthew Markiewicz
Cause called. Paul Kleven argued for appellant Markiewicz. Deputy Attorney
General William Kuimelis argued for respondent People. Cause submitted.

The court recessed at 10:56 a.m.

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION FOUR

Tuesday, September 28, 2010

The Court reconvened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P. J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP James Militar, Bailiff.

A124070 Leigh Robinson

A124096 v.

A124097 U-Haul Co. of California et al.

Causes called. James Evans argued for U-Haul. Matthew Freeman argued for

Robinson. Causes submitted.

A126944 Latonya Finley et al.

v.

First American Title Insurance

Cause called. In pro per appellant Latonya Finley argued. Bryan Kreft argued for

respondent. Cause submitted.

A128223 LaSalle National Bank Association

v.

Latonya Finley et al.

Cause called. In pro per appellant Latonya Finley argued. Charles McKenna teleargued for respondent. Cause submitted.

Court adjourned at 2:42 p.m.

## Wednesday, September 29, 2010

### **Division Two**

### A122777 – The People, v. Andrew James Vance.

The judgment of conviction is reversed. Pursuant to Business and Professions Code section 6086.7, subdivision (a)(2), a copy of this opinion will be sent to the State bar for such disciplinary action, if any, it may deem appropriate. Richman, J., We concur: Kline, P.J., Haerle, J. (Certified for Publication.)

## A126982 - The People, v. Gregory Gray.

The trial court's order of restitution is affirmed. Haerle, J., We concur: Kline, P.J., Lambden, J. (Not for Publication.)

## A125319 – The People, v. Randy Oliver.

This case is remanded to the trial court with instructions to the clerk of that cout to correct the minutes and the abstract of judgment to reflect that a restitution fund fine of \$200, and not \$400, is imposed on appellant in this case. The clerk is further directed to send a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. Otherwise, the judgment is affirmed. Haerle, J., We concur: Kline, P.J., Lambden, J. (Not for Publication.)

### **Division Three**

## A124067, A124801 – Jacqueline King, v. Terri Nielsen et al.

The judgment and orders appealed from are affirmed. Respondents are entitled to their costs on appeal. Siggins, J., We concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

### A120613, A123062 – The People, v. Willie Louis Thompson and Lavar Coleman.

The judgment against Coleman is affirmed. The judgment against Thompson is modified by striking (1) the prior prison term sentence enhancement imposed pursuant to section 667.5, subdivision (b), and (2) the parole revocation restitution fine imposed pursuant to section 1202.45. The trial court is directed to prepare an amended abstract of judgment to reflect the modifications, and to send a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. Except as so modified, the judgment against Thompson is affirmed. The victim restitution orders (one as to each defendant) are affirmed. McGuiness, P.J., We concur: Pollak, J., Siggins, J. (Not for Publication.)

### Wednesday, September 29, 2010 (Continued)

## A125961 – The People, v. Daniel Lee Hickok.

The judgment is affirmed. McGuiness, P.J., We concur: Siggins, J., Jenkins, J. (Not for Publication.)

## A122416 - The People, v. Ramon Alejandre, Jr.

The judgment is affirmed. Pollak, J., We concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

## A127478 – In re L.L., a Person Coming Under the Juvenile Court Law. The People, v. L.L.

The dispositional order is affirmed. McGuiness, P.J., We concur: Pollak, J., Jenkins, J. (Not for Publication.)

## A123815 – In re M.P., a Person Coming Under the Juvenile Court Law. The People, v. M.P.

The dispositional order of January 13, 2009 is reversed and the matter is remanded to the juvenile court for reconsideration of the disposition in light of the opinions expressed herein. Jenkins, J., We concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

## A125085 – The People, v. Cornell James.

The judgment is affirmed. Jenkins, J., We concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

### A124659 – The People, v. Wayne Mobley.

The judgment is affirmed. Pollak, J., We concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

#### **Division Four**

## A125716 - The People, v. Stephen Martinez Lopez.

The 10-year enhancement imposed on count 1 pursuant to section 186.22, subdivision (b)(1), is ordered stricken. The abstract of judgment shall be modified to reflect a sentence on count 1 of 25 years to life, plus a consecutive term of 25 years to life for the firearm enhancement on that count (§ 12022.53, subd. (d)), with a minimum parole eligibility of 15 years. The trial court is directed to prepare an amended abstract of judgment, and a certified copy of the modified abstract shall be forwarded to the Department of Corrections and Rehabilitation.

### Wednesday, September 29, 2010 (Continued)

In all other respects, the judgment is affirmed. Sepulveda, J., We concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

## A128193 - The People, v. Cornell Jerome Racoma.

The judgment is affirmed. Ruvolo, P.J., We concur: Sepulveda, J., Rivera, J. (Not for Publication.)

### **Division Five**

## A126961 - The People, v. Charles David Gordon.

The judgment is affirmed. Simons, J., We concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

## A123863 – Billon Enterprises, Inc., et al., v. Edson Camacho.

The order denying appellant's motion to vacate the default judgment is reversed. The trial court shall issue a new and different order vacating the judgment. Appellant shall recover its costs on appeal from respondents. Needham, J., We concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

## CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION THREE

Wednesday, September 29, 2010

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J. and Jenkins, J.; Siggins, J and L. Phonseya, Deputy Clerk.

A125958 The People,

v.

Fred Andrew Ferguson, Jr.

Cause called and argued by Scott Douglas Handleman, counsel for appellant, and Allan Yannow, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Pollak left the bench and Justice Siggins joined the bench.

A128297 In re K.S., a Person Coming Under the Juvenile Court Law.

The People,

v.

K.S.

Cause called and argued by Syda Kosofky, counsel for appellant, and Christopher Grove, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench and Justice Pollak re-joined argument. Justice Pollak presided over the remainder of the morning session.

A127641 In re James P. Powell on Habeas Corpus.

Cause called and argued by Susan Lisa Jordan counsel for appellant, and Steven Warner counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED** 

### Thursday, September 30, 2010

#### **Division One**

## A127111 – In re M.B. et al., Persons Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. A.B.

The dispositional findings and orders of the juvenile court are affirmed. Marchiano, P.J., We concur: Margulies, J., Banke, J. (Not for Publication.)

## A125176 – The People, v. Isaias Talavera Vargas.

Defendant's convictions are affirmed. His sentences are vacated, and the matter is remanded for resentencing under the law in effect prior to November 8, 2006. Margulies, J., We concur: Marchiano, P.J., Banke, J. (Not for Publication.)

## A128204 – Conservatorship of the Person of Ahmed S. San Mateo County Public Guardian, v. Ahmed S.

The appeal is hereby dismissed. Margulies, J., We concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

#### **Division Two**

## A128292 – The People, v. Randall F. Charlton.

The judgment, including the sentence imposed, is affirmed. Haerle, Acting P.J., We concur: Lambden, J., Richman, J. (Not for Publication.)

## A126677 – In re Ramiro M., a Person Coming Under the Juvenile Court Law. The People, v. Ramiro M.

The jurisdictional and dispositional orders are affirmed. Richman, J., We concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

## A129601 – Joseph Avenius et al., v. Banc of America Securities LLC et al., The O'Quinn Law Firm, Movant and Appellant.

BY THE COURT: The motion is granted and the purported appeal is dismissed. Kline, P.J., Lambden, J., and Richman, J. (Not for Publication.)

## Thursday, September 30, 2010 (Continued)

#### **Division Three**

### A117526 - Jennifer Moore, v. Tomas Hill et al.

A118678 – Jennifer Moore, v. Richard Hatfield et al., John Culver, Individually and as Trustee, etc.

In appeal number A117526, the trial court's entry of judgment on the pleadings in favor of respondents Hill and Pean is affirmed. In appeal number 118678, the trial court's determination that the settlement agreement at issue was in good faith within the meaning of section 877.6 is reversed. The parties shall bear their own costs on appeal. Jenkins, J., We concur: McGuiness, P.J., Pollak, J. (Certified for Partial Publication.)

## A125958 – The People, v. Fred Andrew Ferguson, Jr.

The matter is remanded to the trial court with instructions to recalculate appellant's custody credits in a manner consistent with this opinion and to deliver a certified copy of an amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other regards. McGuiness, P.J., We concur: Pollak, J., Jenkins, J. (Not for Publication.)

## A128297 – In re K.S., a Person Coming Under the Juvenile Court Law. The People, v. K.S.

The order dated March 24, 2010, is affirmed. The appeals from the orders dated February 25, 2010, and March 4, 2010, are dismissed. Jenkins, J., We concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

### A125151 – Manueal M. DeFreitas, v. M.J.B. Pipeline.

The matter is remanded to the trial court for the limited purpose of providing the parties with the option of requesting admission of confidential records into evidence for the trial court to determine their admissibility. The trial court shall order the records sealed only if proper procedures are followed and adequate showings are made. The trial court's orders appointing a provisional director and overruling MJB's demurrer are affirmed. Respondent is awarded his costs on appeal. McGuiness, P.J., We concur: Siggins, J., Jenkins, J. (Not for Publication.)

### A129133 – In re the Marriage of Jiang. Ning Jiang, v. Lan Vivian Jiang.

Respondent's unopposed motion to dismiss the appeal is granted. Pollak, J., We concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

### Thursday, September 30, 2010 (Continued)

The trial court is directed to prepare an amended abstract of judgment reflecting the additional days of presentence conduct credit authorized by section 4019, as amended by Senate Bill No. 18, and to forward a certified copy of the amended abstract to the California Department of Corrections and Rehabilitation. As amended, the judgment is affirmed. Siggins, J., We concur. McGuiness, P.J., Jenkins, J. (Not for Publication.)

## A125781 – The People, v. Julio Cesar Romero.

The trial court is directed to prepare an amended abstract of judgment reflecting the additional days of presentence conduct credit authorized by section 4019, as amended by Senate Bill No. 18, and to forward a certified copy of the amended abstract to the California Department of Corrections and Rehabilitation. As amended, the judgment is affirmed. Siggins, J., We concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

#### **Division Four**

## A127227 – The People, v. Mark Christopher Jurcso.

The order is affirmed. Reardon, J., We concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

## A124362 – The People, v. Matthew Daniel Markiewicz.

The judgment is affirmed. Reardon, Acting P.J., We concur: Sepulveda, J., Rivera, J. (Not for Publication.)

### **Division Five**

## A124054 – The People, v. James Pablo Patterson.

The judgment is affirmed. Jones, P.J., We concur: Simons, J., Needham, J. (Not for Publication.)

## A126415 – In re Cesar V., a Person Coming Under the Juvenile Court Law. The People, v. Cesar V.

The judgment is affirmed. Needham, J., We concur: Simons, Acting P.J., Bruiniers, J. (Not for Publication.)

## A124141 – The People, v. Willieam Fernandez Scott II.

We reverse the judgment and remand the matter to the trial court for a hearing on appellant's *Marsden* motion. If the court finds that appellant makes a prima facie showing of ineffective assistance of counsel or that appellant and Mendenhall were embroiled in such an irreconcilable conflict that ineffective assistance of counsel was likely to result, the trial court should appoint new counsel to assist appellant in filing a motion for new trial or any other motion that newly appointed counsel may deem appropriate. (See *Eastman*, *supra*, 146 Cal.App.4<sup>th</sup> at p. 699; see also *People v. Reed* (2010) 183 Cal.App.4<sup>th</sup> 1137.) However, the trial court shall reinstate the judgment if (a) the *Marsden* motion is denied, (b) the *Marsden* motion is granted but substitute counsel declines to file a new trial motion or ther appropriate motion, or (c) the *Marsden* motion is granted but the trial court denies a new trial motion or other appropriate motion filed by substitute counsel. Simons, Acting P.J., We concur: Needham, J., Bruiniers, J. (Not for Publication.)

## A128062 – Duraflame, Inc., v. Bay Area Air Quality Management District.

The judgment (order denying petition for writ of madate) is affirmed. Costs on appeal are awarded to respondent. Needham, J., We concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

### A117503 – The People, v. Danny Alfred Fontana.

The \$15,000 fine imposed under section 667.6 is stricken. The superior court shall prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed. Needham, J., We concur: Jones, P.J., Dondero, J. (Not for Publication.)